

REMARKS

As an initial matter, applicants wish to thank Examiner Popa for a very fruitful discussion during an interview with the applicants on September 10, 2009. Examiner Popa made various observation with respect to the scope of the instant application and made several suggestions how the applicants may be able to expedite the prosecution of the instant application in light of the submitted response dated August 10, 2009. In particular, Examiner Popa suggested that applicants amend the claims to define a promoter region of the human calponin gene as consisting of the nucleotide sequence of SEQ ID NO.: 3. Applicants again wish to thank the Examiner for this helpful suggestion, which applicants dutifully followed in the instant response in the interest of expediting the prosecution of the instant application.

In light of the above claim amendments and below remarks, applicants respectfully request reconsideration and withdrawal of the rejections of record. In the event that a telephone conference would facilitate examination of this application in any way, the Examiner is invited to contact the undersigned at the number provided. Favorable action by the Examiner is earnestly solicited.

Claim Status

Claims 1, 6-7, 20-21, 23-26 and 35-36 are pending after entry of this paper. Claims 1, 6-7, 20-21, 23-26 and 35-36 have been rejected. Claims 2-5, 8-19, 22-24 and 27-34 have been previously cancelled without prejudice. Applicants reserve the right to pursue cancelled claims in a divisional or a continuing application.

Claims 1 and 35 have been amended to replace the transitional phrase “comprising” of step (i) in Claim 1 or step (a), substep (i) in Claim 35 with the transitional phrase “consisting of.”

No new matter is added by the instant amendment. Reconsideration and withdrawal of the pending rejections in view of the above claim amendments and below remarks are respectfully requested.

Response to Objection to the Specification

The Examiner objects to the substitute specification submitted on August 10, 2009 and a resubmission of a specification that is clear, concise and exact. To comply with Examiner’s request, applicants respectfully submit herewith a substitute specification in accordance with 37 C.F.R. §1.121(b)(3). No new matter has been added to the specification by this amendment. Applicants believe the specification as amended is sufficiently clear, concise and exact to put those skilled in the art on notice. Applicants respectfully request withdrawal of the objections to the specification.

Response to Rejections under 35 U.S.C. §103(a)

Claims 1, 6, 7, 20, 21, 25, 35, and 36 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Martuza, et al. (U.S. Patent No. 5,728,379) in view of Chung, et al. (*J. Virol.* 73:7556-7564, 1999), Yamamura, et al. (*Cancer Research* 61:3969-3977, 2001), Wagstaff, et al. (*Gene Therapy* 5: 1566-1570, 1998) and Foster (*J. Virol. Methods* 75: 151-160, 1998). Furthermore, claims 1, 6, 7, 20, 21, 25, 26, 35, and 36 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Martuza, et al., in view of Chung, et al., Yamamura, et al., Wagstaff, et al., Foster, and Miyatake, et al., (*Stroke*, 30:2431-2439, 1999). Applicants

respectfully disagree and assert that contrary to the Examiner's contention, the claimed invention is not made obvious by the combination of Martuza, Chung, Yamamura, Wagstaff, Foster and Miyatake.

Nonetheless, in order to expedite prosecution and without disclaimer of, or prejudice to, the subject matter recited therein, applicants have amended claims 1 and 35 to replace the transitional phrase in step (i) and (a)(i), respectively, with "consisting of," thus effectively limiting the promoter region of the human calponin gene to the sequence defined by SEQ ID NO.: 3. Accordingly, since none of the cited references (*i.e.*, Martuza, Chung, Yamamura, Wagstaff, Foster, Miyatake) teach the promoter region defined to SEQ ID NO.: 3, applicants respectfully assert that the instant invention would not have been obvious based at least on the teachings of Yamamura.

Therefore, in view of the arguments presented above, applicants assert that none of the references, either alone or in combination, discloses all of the elements to produce the claimed HSV vector. Reconsideration and withdrawal of the rejections under 35 U.S.C. §103(a) of the claims 1, 6, 7, 20, 21, 25, 26, 35, and 36 are respectfully requested.

Dependent Claims

The applicants have not independently addressed all of the rejections of the dependent claims. The applicants submit that for at least similar reasons as to why independent claims 1 and 35 from which all of the dependent claims 6, 7, 20-21, 25, 26, and 36 depend are believed allowable as discussed *supra*, the dependent claims are also allowable. The applicants however, reserve the right to address any individual rejections of the dependent claims and

present independent bases for allowance for the dependent claims should such be necessary or appropriate.

CONCLUSION

Based on the foregoing amendments and remarks, the applicants respectfully request reconsideration and withdrawal of the pending rejections and allowance of this application. The applicants respectfully submit that the instant application is in condition for allowance. Entry of the amendment and an action passing this case to issue is therefore respectfully requested. In the event that a telephone conference would facilitate examination of this application in any way, the Examiner is invited to contact the undersigned at the number provided. Favorable action by the Examiner is earnestly solicited.

AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. **50-4827**, Order No. 1004331.019US.

In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. **50-4827**, Order No. 1004331.019US.

Respectfully submitted,
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